

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Louise Taylor)	
)	
-vs-)	
)	
Illinois Bell Telephone Company)	11-0462
)	
Complaint as to billing/charges)	
in Evanston, Illinois)	

REPLY OF AT&T ILLINOIS IN SUPPORT OF MOTION FOR DISMISSAL

The Complaint filed by Louise Taylor suffers from a variety of shortcomings. Although Ms Taylor claims that Illinois Bell Telephone Company (“AT&T Illinois”) deliberately and repeatedly interrupted her telephone service over a 10-year period, she provides specific information about only one such incident. The legal authority that Ms Taylor cites as relevant to her service problems has nothing to do with that type of problem. The Complaint also requests a type of remedy – restitution – that the Commission has no authority to provide, and it appears to seek damages barred by the terms of AT&T Illinois’ tariff.

AT&T Illinois moved to dismiss the Complaint based on each of these shortcomings. Ms Taylor’s Response,¹ for the most part, steers clear of the company’s arguments and instead focuses on a myriad of factual assertions, none of which bears on the Commission’s ability to decide the issues raised by the motion. Ms Taylor also asserts that her case should not be

¹ The title of Ms Taylor’s filing is “Motion of [proprietary] for Non-Dismissal,” although the filing simply responds to the Motion to Dismiss and does not seek any other relief from the Commission. AT&T Illinois accordingly will refer to the filing as a “Response” in this Reply. In addition, the first five paragraphs of the Response are described as an affidavit (*see* Response at 1-2), although Ms Taylor’s signature is not verified by a notary public. The factual information in these paragraphs thus should not be considered part of the evidentiary record.

dismissed, despite the inadequacy of the Complaint, because she does not have legal training and cannot find counsel to assist her.

Even taking Ms Taylor's pro se status into account, the shortcomings of the Complaint are so substantial that it would be unfair to AT&T Illinois to have to proceed to trial on the pleading that she has submitted. In addition, she should not be allowed to rely now on a legal theory not mentioned in the Complaint. Accordingly, for the reasons explained below, the Commission should dismiss the case.

1. Ms Taylor Fails to Rebut AT&T Illinois' Legal Arguments.

Ms Taylor appears to respond to AT&T Illinois' legal arguments in three ways. None saves her complaint.

First, in an attempt to respond to AT&T Illinois' position that the Commission rule cited in the Complaint (83 Ill. Admin. Code § 735.130(f)) has nothing to do with her situation, Ms Taylor points to her lack of legal training and her reliance on a suggestion from a Commission staff person that she cite this rule. Response at 2, ¶ 1.² These excuses are not compelling.

Although Ms Taylor may believe that she has been wronged by AT&T Illinois, she does not have an unqualified right to proceed to trial and obtain relief on the basis of a vaguely articulated "wrong." Her status as a pro se litigant does not exempt her from having to set forth the legal basis for her claims. See *J. Eck & Sons v. Reuben H. Donnelly Corp.*, 213 Ill. App. 3d 510, 512, 572 N.E.2d 1090, 1091 (1st Dist. 1991) (finding that complaint must state legal bases for claims); *Peoples Gas Light and Coke Co. v. Illinois Commerce Comm'n*, 221 Ill. App. 3d

² Ms Taylor also suggests that she had insufficient room on the Commission's pre-printed complaint form to provide additional information. Response at 2, ¶ 1. However, the identification of 83 Ill. Admin. Code § 735.130(f) used a portion of only one of the three lines set aside on the form for listing "the law, Commission rule(s), or utility tariff... involved with [her] complaint." Complaint, p. 1.

1053, 1060, 583 N.E.2d 68, 72 (1st Dist. 1991) (finding that Commission complaint must be adequate to provide notice of claims to respondent).

The legal basis for Ms Taylor's claim controls important aspects of her case. For example, if she is claiming that AT&T Illinois overcharged her for service, and is seeking a refund, the Public Utilities Act would only allow her to pursue a claim for two years of overcharges. *See* 220 ILCS 5/9-252.1. Similarly, the basis for her claim could determine whether the Commission is even an appropriate venue to pursue the claim. *See* Motion to Dismiss at 4 (arguing that, if Ms Taylor is seeking restitution, such a remedy must be sought in court). The Motion to Dismiss conclusively demonstrated that the Commission rule cited in the Complaint is inapplicable to Ms Taylor's situation, since that rule applies only when a customer's service is discontinued for non-payment of a past due bill.³ Ms Taylor nowhere suggests that her service was disconnected for nonpayment. Since Ms Taylor has identified no valid legal basis for her claim, the Complaint should be dismissed.

Second, although Ms Taylor acknowledges AT&T Illinois' argument that the Commission has no authority to decide claims of unjust enrichment (Response at 3, ¶ 2), she points to her lack of legal training and maintains that the Commission – despite its lack of equitable powers – should proceed to decide her equitable claim. As AT&T Illinois explained in the Motion to Dismiss, the Commission simply has no ability to decide claims founded on equitable concepts such as restitution and unjust enrichment. *See* Motion to Dismiss at 4.

Moreover, as AT&T Illinois' motion also explained, the Illinois General Assembly has already established a system governing when a carrier must provide credits to customers who have been out of service for more than a specified period, and prescribing the value of the credits

³ Moreover, even if 83 Ill. Admin. Code § 735.130(f) were applicable, AT&T Illinois did not violate that provision. *See* Motion to Dismiss at 3 n.2.

that customers should receive. *See* 220 ILCS 5/13-712(e); 83 Ill. Admin. Code § 732.30. Ms Taylor makes no attempt to explain why she – alone among all telephone customers in Illinois – should be allowed to circumvent the judgment of Illinois lawmakers and pursue other avenues of compensation for her alleged service outages.

Third, Ms Taylor improperly attempts to capitalize on her failure to state a cognizable claim. In its motion, AT&T Illinois made a conditional argument regarding the availability of consequential damages because it was uncertain whether the Complaint’s reference to “thousands of dollars” was a plea to the Commission to award such relief. *See* Motion to Dismiss at 5 (quoting Complaint, p. 2, ¶ 3). In the Response, however, Ms Taylor criticizes AT&T Illinois for addressing a claim that she may not be making. Response at 2, ¶ 4.

Ms Taylor wants to have it both ways. She uses her lack of a legal background to justify her failure to identify a proper legal basis for her Complaint, yet criticizes AT&T Illinois for making an argument based on its best efforts to make sense of her “nebulous allegation[s].” Response at 2 ¶ 4. As stated previously, Illinois law is clear that AT&T Illinois has a right to be apprised of the nature of the claims against it. *See J. Eck, supra*, 213 Ill. App. 3d at 512, 572 N.E.2d at 1091; *Peoples Gas, supra*, 221 Ill. App. 3d at 1060, 583 N.E.2d at 72. The Complaint fails to provide this information, and the Commission should dismiss it.

In addition, assuming that Ms Taylor is seeking “thousands of dollars” in compensation (Complaint, p. 2 ¶ 3),⁴ the limitation of liability provision in the AT&T Illinois tariff bars such a claim. That provision applies when a “mistake, omission, interruption, delay, error or defect in transmission occurs” (Ill. C.C. No. 19, Part 2, § 2, ¶ 3.1 (attached as Exhibit A to Motion to Dismiss)), and it makes no distinction – as Ms Taylor does – between “out-of-service” complaints and “deliberate shut-off” complaints. Response at 2, ¶ 4. In either situation, “[n]o

⁴ Ms Taylor never actually denies that she is seeking such relief. *See* Response at 2, ¶ 4.

other liability shall in any case attach to the Company.” Ill. C.C. No. 19, Part 2, § 2, ¶ 3.1 (attached as Exhibit A to Motion to Dismiss).

The Illinois Supreme Court recently found that such limitation of liability provisions in a utility tariff barred claims for consequential damages arising from service outages. *See Sheffler v. Commonwealth Edison Co.*, ___ Ill. 2d ___, 2011 WL 2410366, at *8 (June 16, 2011) (attached as Exhibit B to Motion to Dismiss). If Ms Taylor seeks such damages, either at the Commission or in court, she has no legally cognizable claim. The Commission should therefore dismiss the Complaint.

2. Ms Taylor’s Factual Arguments Are Irrelevant.

Much of Ms Taylor’s submission (and the attachments in particular) makes factual statements about a variety of topics. These topics include a description of her health and living situation (Response at 3, Conclusion), a detailed critique of the information that AT&T Illinois provided to the Illinois Attorney General in response to Ms Taylor’s complaint to that office (Response at 1, ¶¶ 2-3); and a description of the contents of her wallet when it was stolen in December 2010. Attachments to Response at 7 (second page of Jan. 2, 2011, letter).

Much of this information has no bearing on the legal arguments on which the Motion to Dismiss is based. For example, while a description of Ms Taylor’s health problems may evoke sympathy for her, it is irrelevant to whether she has stated an adequate legal basis for her claim. Similarly, Ms Taylor’s analysis of exactly when AT&T personnel called her on February 3, 2011, regarding her complaint to the Illinois Attorney General (Response at 1, ¶ 3) sheds no light on whether the Commission can consider a claim of unjust enrichment. In any event, if the matter progressed to hearing, AT&T Illinois could rebut any potentially relevant factual

assertions.⁵ Accordingly, the Commission cannot, and should not, consider such facts in deciding the Motion to Dismiss.

3. The Commission Should Ignore Ms Taylor's Attempt to Raise a New Legal Theory.

In the last two sentences of the Response, Ms Taylor appears to raise a new legal basis for the Complaint. In particular, she states that AT&T Illinois “had a legal and binding contract with me as a consumer,” which it broke “repeatedly and without warning.” Response at 3, Conclusion. Assuming that Ms Taylor is attempting to salvage her case with a new legal theory, that attempt should be rejected for several reasons.

First, the Complaint must stand or fall on its own merits. The Motion to Dismiss questions the legal and factual sufficiency of the allegations that Ms Taylor has made in the Complaint. She cannot overcome those insufficiencies simply by providing a new legal theory or new facts in response to the motion, as she attempts to do here. *See Exchange Nat'l Bank of Chicago v. Cullerton*, 17 Ill. App. 3d 392, 394, 308 N.E.2d 284, 286 (1st Dist. 1974).

Second, to the extent that the Response now attempts to raise a breach of contract claim, Ms Taylor overlooks the effect of the AT&T Illinois tariff. As the Illinois Supreme Court recently pointed out, after a utility files a tariff with the Commission, “the tariff binds the utility and the customer, and governs their relationship.” *Sheffler, supra*, 2011 WL 2410366 at *6 (attached as Exhibit B to Motion to Dismiss). As a result, the tariff would govern the possible wrongfulness of AT&T Illinois' conduct, as well as the extent of Ms Taylor's ability to recover for such wrongful conduct. As noted in Section 1 above, the tariff's limitation of liability

⁵ For example, AT&T Illinois could rebut Ms Taylor's statements about whether a repair technician needed to gain access to the inside of her house to restore her service on a particular date and about when the company closed a particular repair ticket. *See* Response at 1, ¶ 2(a) & 2(b).

provision precludes Ms Taylor from recovering damages. As a result, the Commission should not allow her to transmute the Complaint into a breach of contract claim.⁶

WHEREFORE, for all the reasons set forth above and in the Motion to Dismiss, AT&T Illinois requests that the Complaint be dismissed.

Dated: October 4, 2011

Respectfully submitted,

/s/
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⁶ Indeed, the Commission has no authority to decide breach of contract claims. See Order, *Consolidated Communications Consultant Services, Inc. v. Illinois Bell Telephone Co.*, Docket No. 99-0429, 2001 PUC Lexis 568 at *41 (June 14, 2001) (stating that Commission “entertains complaints concerning violations of regulatory statutes, orders and rules,” but not claims for torts or “breaches of contract”) (attached hereto as Exhibit C).

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **REPLY OF AT&T ILLINOIS IN SUPPORT OF MOTION FOR DISMISSAL** was served upon all parties electronically and/or U.S.

Mail this 4th day of October 2011.

_____/s/
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